IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 502 OF 2004.

Shri Trivikram Amonkar,
aged 53 years,
s/o Venkatesh Amonkar,
Businessman, r/o H.No. 251,
Comba, Margao,
Salcete, Goa. .... Petitioner.

Versus

Shri Deepak Alve,
aged 54 years,
s/o Digambar Alve,
Businessman, r/o H. No. 201,
Comba, Margao, Salcete, Goa. .... Respondent.

Shri Nitin Sardessai, Advocate for the Petitioner.

Shri F.M. Reis Advocate for the Respondent.

CORAM: R. M. LODHA, J.

DATE: 5th OCTOBER, 2005.

ORAL JUDGMENT:

Rule, returnable forthwith. Shri F.M. Reis, learned Advocate waives service for the respondent.

2. Rule is heard finally at this stage.

3. In Regular Civil Suit No.331/83/D wherein the present respondent

was the plaintiff and the petitioner was defendant, the decree came to be passed on 31.3.2004. Upset by the Judgment and Decree passed in the said suit by the Civil Judge J.D., Margao, Goa, the defendant (the petitioner) filed appeal on 13.7.2004. The appeal was barred by time and, accordingly, an application for condonation of delay was made by the petitioner. The application for condonation of delay was contested by the respondent. The appellate Court after hearing the parties through their counsel, dismissed the application for condonation of delay. He held that sufficient cause was not made out in the application. The Order dated 21.9.2004 whereby the petitioner's application for condonation of delay came to be dismissed has given rise to the present petition.

4. The broad facts stated by the petitioner in the application for condonation of delay were: the Judgment and Decree was passed on 31.3.2004; the application for certified copy was made on 19.4.2004; the certified copy was actually received on 5.5.2004; the petitioner was advised by the Advocate that the limitation for filing the appeal was 90 days and that the limitation period would expire on 5.8.2004; and due to the mistaken belief that the limitation for filing the appeal was 90 days though it is 30 days, the delay occurred.

5. In response to the application for condonation of delay, the reply was

filed by the respondent. Objection was taken in the reply that there was nothing on record to suggest that the Advocate advised the petitioner that limitation for filing the appeal was 90 days and that the limitation period would end on 5.8.2004. The respondent alleged that the petitioner was guilty of wilful negligence in filing the appeal beyond time and therefore , the application deserved to be dismissed.

6. The application that runs in hardly 1-1/2 pages and the relevant paragraphs are paragraphs 3, 4 and 5 only, the appellate Court has passed the impugned Order that runs in 11 foolscap typed pages. Such elaborate exercise was surely unnecessary and the judicial time could have been saved by the appeal Court by being precise and brief in consideration of the matter whether the petitioner (appellant therein) was prevented by sufficient cause in filing the appeal beyond time or not. The detailed consideration of large number of authorities cited by both the parties was surely not required; the reference would have been suffice.

7. Be that as it may, the ground set up by the petitioner in the application for condonation of delay is that based on the advice of the Advocate he was under bonafide belief that the limitation for filing the appeal was 90 days and that resulted in delay. There is an affidavit to this effect by the appellant himself. It is true that the respondent has filed reply

and denied the aforesaid aspect. But I find no justifiable reason as to why the affidavit filed by the appellant should not be accepted. But for the mistaken belief the appellant would not have gained anything by waiting for about 90 days in filing the appeal; the appeal could have been filed by him within 30 days.

8. It is well settled and it needs no elaboration that an application for condonation of delay is required to be seen by the Court with justice oriented approach and if the explanation is found acceptable, the Court should be liberal in condoning the delay so that the matter could be examined on merits. The inconvenience that was caused to the respondent could be compensated by award of reasonable costs.

9. I am, thus, satisfied that the impugned Order passed by the Addl. District Judge, South Goa, Margao cannot be sustained and has to be set aside and I order accordingly. The application for condonation of delay in filing the appeal before the appellate Court is allowed on payment of costs of Rs.2500/- by the petitioner to the respondent within two weeks from today.The appellate Court shall proceed with the matter now.

10. Writ Petition is disposed of accordingly.

R. M. LODHA, J.

sl.